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INFORMATION BULLETIN

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HARMONIZATION WITH CERTAIN FEDERAL TAX MEASURES AND OTHER TAX MEASURES

This information bulletin presents the position of the Ministère des Finances on the tax measures contained in the federal budget of April 21, 2015 and on various other tax measures adopted or proposed by the federal government, including the zero-rating of feminine hygiene products.

It also describes in detail the changes made to certain existing measures concerning individuals and businesses. The changes, mainly of a technical nature, are intended to enhance the coherence and integrity of the tax system.

The changes to the measures concerning individuals are intended to, among other things, clarify the notion of dependent child for the purposes of various measures that take into account the presence of a child in a household, and to make eligible, for the averaging mechanisms, the lump-sum payments of wage loss insurance.

The changes to the measures concerning businesses bear on, among other things, the calculation of eligible production costs for the purposes of the refundable tax credit for film production services and the scope of the exclusion of wages pertaining to certain government contracts for the purposes of the tax credits for the development of e-business.

Lastly, the information bulletin makes public other legislative clarifications relating to certain tax measures.

For information concerning the matters dealt with in this information bulletin, contact the Secteur du droit fiscal et des politiques locales et autochtones at 418 691-2236.

The English and French versions of this bulletin are available on the Ministère des Finances website at www.finances.gouv.qc.ca

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1. FEDERAL TAX LEGISLATION AND REGULATIONS

1.1 Harmonization with various measures announced in the April 21, 2015 federal budget

On April 21, 2015, the Minister of Finance of Canada presented the federal government's budget for 2015. At that time, he tabled, in the House of Commons, supplementary information describing in detail each of the tax measures proposed in the budget as well as notices of ways and means motions to amend accordingly federal tax legislation and regulations.[1]

❑ Measures relating to income tax

Québec's tax legislation and regulations will be amended to incorporate certain income tax-related measures proposed in the 2015 federal budget. However, the changes to Québec's tax system will only be adopted following the assent given to any federal statute or adoption of any federal regulations giving effect to the retained measures, taking into account technical amendments that may be made prior to such assent or adoption. More specifically, these changes will apply on the same dates as those retained for the purposes of the federal measures with which they are harmonized.

■ Measures retained

Québec's tax legislation and regulations will be amended to incorporate, with adaptations on the basis of their general principles, the measures relating to:

1. the preservation of the status of testamentary trust despite a contribution to the trust (BR 2);[2]

2. the transition measure concerning the minimum withdrawal amounts required under a registered retirement income fund for 2015 (BR 6);

3. the extension of the temporary measure to allow certain individuals to become the holder of a registered disability savings plan (BR 12);

4. the capital gains exemption from capital gains tax in respect of certain dispositions of private corporation shares and real estate (BR 17), it being understood that the measure will apply to donations made to a qualified donee within the meaning given to this expression in section 999.2 of the *Income Tax Act*;[3]

5. the investments of registered charities and registered Canadian amateur athletic associations in limited partnerships (BR 18 and BR 19), it being understood that this measure will also apply to the investments of registered Québec amateur athletic associations;

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1 DEPARTMENT OF FINANCE CANADA, *Economic Action Plan 2015 – Strong Leadership: A Balanced-budget, Low-tax Plan for Jobs, Growth and Security*, April 21, 2015, Annex 5, "Tax Measures: Supplementary Information and Notices of Ways and Means Motions", pp. 433-518.

2 The references in parentheses correspond to the number of the budget resolutions (BR) of the Notice of Ways and Means Motion to amend the *Income Tax Act* and other tax legislation tabled in the House of Commons on April 21, 2015.

3 CQLR, chapter I-3.

6. the modification of the gross-up factor applicable to non-eligible dividends (BR 21);
7. accelerated capital cost allowance for manufacturing and processing machinery and equipment (BR 25 to BR 28);
8. the possibility for new employers to make quarterly remittances (BR 30);
9. synthetic equity arrangements (BR 31 and BR 32);
10. tax avoidance of corporate capital gains (BR 33 to BR 36);
11. captive insurance companies (BR 41).

Moreover, while they do not require any legislative or regulatory amendments, the federal measures respecting the tax-free savings account (BR 1), the minimum withdrawal factors for registered retirement income funds (BR 5 and BR 7 to BR 9) and the addition to the list of the qualified donees of certain foreign charitable foundations (BR 20(1)) will be retained for the application of the Québec's tax system.

- **Measures not retained**

Some measures have not been retained because they do not correspond to the features of Québec's tax system or because Québec's tax system is satisfactory or has no corresponding provisions. These measures relate to:

— the establishment of a home accessibility tax credit (BR 3 and BR 4);

— the lifetime capital gains exemption for qualified farm or fishing property (BR 10 and BR 11);

— the revision of the calculation of the family tax cut to take account of the interaction of the transfer of tax credits attributable to education (BR 16);

— the conditions governing the registration of certain foreign charitable foundations (BR 20(2));

— the small business deduction (BR 23 and BR 24);

— extension of the rules governing the carry forward of the taxation of patronage dividends paid in shares by agricultural cooperatives (BR 29);

— the withholding at source by non-resident employers (BR 37 to BR 40).

Furthermore, the modification of the rate of the tax credit applicable to non-eligible dividends (BR 22) will not be retained.

More specifically, the rate of the tax credit applicable to non-eligible dividends remains unchanged for the purposes of applying the Québec's tax system.

❑ Measures relating to tax administration

The *Tax Administration Act*[4] will be amended to incorporate, with adaptations on the basis of its general principles, the measures relating to:

— the repeated failure to report income penalty (BR 13);[5]

— alternative arguments in support of assessments after the expiration of the normal reassessment period.[6]

However, the changes to this Act will only be adopted following assent given to any federal statute giving effect to the measures, taking into account technical amendments that may be made prior to such assent and will apply starting on the day following the date of assent to the bill amending the *Tax Administration Act*.

Moreover, the measure respecting information sharing for the collection of non-tax debts[7] will not be retained, given that Québec legislation is satisfactory in this respect.

1.2 Harmonization with the zero-rating measure of feminine hygiene products

On May 28, 2015, the Minister of Finance of Canada released a notice of ways and means motion amending the *Excise Tax Act*, in order to zero-rate the supply of products marketed exclusively for feminine hygiene purposes, namely, sanitary napkins, tampons, sanitary belts, menstrual cups or other similar products.

Given the principle of general harmonization of the Québec sales tax (QST) system with the goods and services tax and harmonized sales tax system, the Québec's tax system will be changed to incorporate the federal zero-rating measure on these feminine hygiene products, and this, for application on the same date as that determined in the federal tax system.

The changes to the QST system will be adopted only after the assent of federal statute implementing the measure, taking into account technical amendments that may be made prior to such assent.

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4 CQLR, chapter A-6.002.

5 See note 2.

6 This measure is stipulated by Budget Resolution 14 in the Notice of Ways and Means Motion to amend the *Income Tax Act* and other tax legislation tabled in the House of Commons on April 21, 2015 and by Budget Resolution 1 of the Notice of Ways and Means Motion to amend the *Excise Tax Act* tabled on the same day.

7 This measure is stipulated by Budget Resolution 15 in the Notice of Ways and Means Motion to amend the *Income Tax Act* and other tax legislation tabled in the House of Commons on April 21, 2015 and by Budget Resolution 2 of the Notice of Ways and Means Motion to amend the *Excise Tax Act* tabled on the same day.

1.3 Tax deductions at source respecting payments from a registered disability savings plan

Since 2008, tax legislation provides that anyone who makes a payment from a registered disability savings plan must deduct from it or withhold the amount stipulated by regulation on account of the tax payable by the beneficiary, and both for the purposes of the Québec's tax system as that of the federal tax system.

Actually, no tax deductions at source must be made in respect of payments from a registered disability savings plan since no regulation has yet been adopted prescribing the amount to be deducted. It follows that the beneficiaries of such plans are usually required to pay the tax attributable to such payments no later than April 30 of the year following that in which they were received, unless they are required to pay tax instalments.

On May 9, 2015, the Canada Revenue Agency did publish in the *Canada Gazette* a notice whereby the Governor in Council proposes to make the *Regulations Amending the Income Tax Regulations (Withholding of Income Tax on Payments from Registered Disability Savings Plans)*.[8]

According to the proposed regulation, tax must be deducted at the source starting July 1, 2015 on the portion of any amount paid as a disability assistance payment make under a registered disability savings plan that is required by paragraph 56(1)(*q*.1) of the *Income Tax Act*[9] to be included in computing a taxpayer's income.

Briefly, the amount of tax that must be deducted from a disability assistance payment will be determined according to a rate applied to the taxable portion of any payment from a registered disability savings plan paid to the beneficiary during a given year that exceeds, on an annual cumulative basis, the amount used to calculate the basic tax credit and that used to calculate the disability tax credit granted under the federal tax system.

Accordingly, to better distribute the tax burden of the beneficiaries of registered disability savings plans, Québec's tax regulations will be amended to stipulate that anyone who, in the course of a given year, pays to an individual residing in Canada a disability assistance payment from a registered disability savings plan will, starting on October 1, 2015, have to deduct or withhold from such a payment an amount equivalent to that determined according to the following formula:

16% (A − B)

In this formula:

— letter A represents the portion of the amount paid as a disability assistance payment pursuant to the plan that must be included in the calculation of the individual's taxable income for the given year in accordance with section 694.0.0.3 of the *Taxation Act*;[10]

8 *Canada Gazette, Part I*, Vol. 149, No. 19, May 9, 2015, pp. 1008-1012.

9 R.S.C., 1985, c. 1, 5th suppl.

10 CQLR, chapter I-3.

— letter B represents:

– in the case where the beneficiary is deceased, zero,

– in other cases, the surplus, on the overall amounts each of which corresponds to a portion of an amount previously paid to an individual during the given year as a disability assistance payment pursuant to the registered disability savings plan that must be included in the calculation of his taxable income for the year in accordance with section 694.0.0.3 of the *Taxation Act*, of the total of the following amounts:

- the amount that must be used for the given year for the purposes of calculating the basic tax credit,

- the amount that must be used for the given year for the purposes of calculating the tax credit for severe and prolonged impairment in physical or mental functions.

1.4 Tax treatment of certain benefits or allowances paid to Canadian Forces members and veterans

On June 15, 2015, Bill C-59, the *Act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures*, was passed by the House of Commons.[11]

The bill seeks to implement certain tax measures proposed or mentioned in the *Economic Action Plan 2015*,[12] including the measure to exempt from income tax amounts received on account of a critical injury benefit or a family caregiver relief benefit that the bill proposes to introduce into the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*.[13]

Given that, in general, Québec's tax system is harmonized with the federal tax system with respect to the tax treatment applicable to various sources of income, the *Taxation Act*[14] will be amended to incorporate, with adaptations based on its general principles, the federal measure aimed at stipulating that an individual does not have to include in his income the amounts received on account of a critical injury benefit payable under Part 3 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* or on account of a family caregiver relief benefit payable under Part 3.1 of that Act.

However, the amendments to Québec's legislation will only be adopted after the *Economic Action Plan 2015 Act, No. 1* is assented to, taking into account technical amendments that may be made prior to such assent. More specifically, these changes will apply on the same dates as those retained for the purposes of the federal measure with which they are harmonized.

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11 The short title of the Act is *Economic Action Plan 2015 Act, No. 1*

12 DEPARTMENT OF FINANCE CANADA, *Economic Action Plan 2015 – Strong Leadership: A Balanced-budget, Low-tax Plan for Jobs, Growth and Security*, April 21, 2015, Annex 5, "Tax Measures: Supplementary Information and Notices of Ways and Means Motions", pp. 433-518.

13 S.C. 2005, c. 21.

14 CQLR, chapter I-3.

1.5 Harmonization with certain measures contained in the *Jobs and Growth Act, 2012*

On December 14, 2012, assent was given to the *Second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures.*[15]

In information bulletins 2012-5[16] and 2012-6,[17] the Ministère des Finances made known Québec's position on the majority of the tax measures contained in the aforementioned act. However, the Québec's position on the measures relating to a shareholder's loans or indebtedness had not been made public to date.

Given that the Québec tax system is harmonized with the federal tax system in this regard, the Québec tax legislation will be amended to incorporate, with adaptations on the basis of its general principles, the federal measures relating to a shareholder's loans or indebtedness (5 and 6).[18]

These amendments will apply on the same dates as those retained for the purposes of the federal measures with which they are harmonized.

1.6 Harmonization with certain measures contained in the *Economic Action Plan 2014 Act, No. 1*

On June 19, 2014, assent was given to Bill C-31, entitled *Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures.*[19] The main purpose of the Act is to implement certain tax measures proposed in Economic Action Plan 2014.[20]

As part of the budget speech of June 4, 2014,[21] the Ministère des Finances made known Québec's position on several tax measures contained in the aforementioned act. However, Part 1 of the *Economic Action Plan 2014 Act, No. 1* is also aimed at implementing new income tax measures. More specifically, these new measures relate to:

— the disclosure of confidential information to an appropriate police organization in certain circumstances if the information relates to a serious offence (28);[22]

— the exclusion of the Business Development Bank of Canada and BDC Capital Inc. as financial institutions for the purposes of the mark-to-market rules (37).

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15 S.C. 2012, c. 31. The short title of this act is *Jobs and Growth Act, 2012*.

16 MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2012-5*, July 6, 2012, pp. 1-5.

17 MINISTÈRE DES FINANCES ET DE L'ÉCONOMIE DU QUÉBEC, *Information Bulletin 2012-6*, December 21, 2012, pp. 28-33.

18 The reference in parentheses corresponds to the section numbers in the *Jobs and Growth Act, 2012*.

19 S.C. 2014, c. 20. The short title of this act is *Economic Action Plan 2014 Act, No. 1*.

20 DEPARTMENT OF FINANCE CANADA, *Economic Action Plan 2014 – The Road to Balance: Creating Jobs and Opportunities*, February 11, 2014, Annex 2, "Tax Measures: Supplementary Information, Notices of Ways and Means Motions and Draft Amendments to Various GST/HST Regulations", pp. 315-419.

21 MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2014-2015 – Additional Information on the Fiscal Measures of the Budget*, June 4, 2014, pp. 81-83.

22 The references in parentheses correspond to the section numbers in the *Economic Action Plan 2014 Act, No. 1*.

In this regard, the *Regulation respecting the Taxation Act*[23] will be amended to incorporate, with adaptations based on the Regulation's general principles, the measure providing that the Business Development Bank of Canada and BDC Capital Inc. are not financial institutions for the purposes of the mark-to-market rules. This change to the Québec tax system will apply on the same date as that retained for the purposes of the federal measure with which it is harmonized.

Conversely, the changes aimed at allowing confidential information to be provided in certain cases involving a serious offence were not retained, because the Québec tax system is satisfactory in this respect.

1.7 Harmonization with certain measures in the *Economic Action Plan 2014 Act, No. 2*

On December 16, 2014, Bill C-43, entitled *A second Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures*, was assented to.[24]

In addition to acting on certain tax measures proposed in the February 11, 2014 federal budget,[25] Part 1 of this act implements new measures concerning income tax.

Québec made public its position on the tax measures proposed in the federal budget in the June 4, 2014 Budget Speech.[26]

As for the new tax measures implemented by the Part 1 of the *Economic Action Plan 2014 Act, No. 2*, most of them will be integrated into Québec's tax legislation and regulations.

More specifically, Québec's tax legislation and regulations will be amended to incorporate, with adaptations on the basis of their general principles, the measures relating to:

— thin capitalization rules (4 and 6(2));[27]

— the inclusion in income of deemed interest on amounts owing by a non-resident (5);

— the calculation of a business investment loss (10(2) and 10(3));

— the English versions of the rules respecting inter vivos transfers by individuals (14(1) and 14(2));

— the establishment of the residence of international shipping corporations (18, 71(2), 71(6) in part and 74);

— the anti-avoidance rule respecting foreign mergers (19);

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23 CQLR, chapter I-3, r. 1.

24 S.C. 2014, c. 39. The short title of the Act is *Economic Action Plan 2014 Act, No. 2*.

25 DEPARTMENT OF FINANCE CANADA, *Economic Action Plan 2014 – The Road to Balance: Creating Jobs and Opportunities*, February 11, 2014, Annex 2, "Tax Measures: Supplementary Information, Notices of Ways and Means Motions and Draft Amendments to Various GST/HST Regulations", pp. 311-419.

26 MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2014-2015 – Additional Information on the Fiscal Measures of the Budget*, June 4, 2014, pp. 81-83.

27 The references in parentheses correspond to the number of the sections of the *Economic Action Plan 2014 Act, No. 2*.

— the upstream deposits of an eligible bank affiliate (20);

— non-resident corporations without share capital and Australian trusts (22);

— the repeal of the transitional relief for a trust whose taxation year includes February 22, 1994 (26(6) in part);

— the clarification concerning the status of a qualified donee for the application of the deduction and tax credit for ecological gifts (29(3) and 34(5)), it being understood that this status will be required, in the case of a gift of land situated in a region bordering on Québec or a real servitude encumbering such a land, only in the case of donee that is an eligible registered charity, the State or Her Majesty in right of Canada or a province other than Québec, a municipality of Canada or a municipal or public body performing a function of government in Canada;

— the recognition of loans granted pursuant to the *Apprentice Loans Act*[28] for the application of the tax credit for interest paid on student loans (35);

— the modernization of the life insurance policy exemption test (52, 79, 81 to 84, 86 in part and 87);

— the definition of "taxable Canadian property" (71(5));

— trust loss restriction event (75);

— the exemption from deducting income tax at the source on non-taxable employment income received from certain international organizations (78), it being understood that the exemption will also cover employment income exempt from income tax under a regulation pursuant to paragraphs *a*, *b*, *c* or *f* of the first subsection of section 96 of the *Tax Administration Act*.[29]

Moreover, while they do not, in all instances, require legislative or regulatory amendments, will also be retained for the application of the Québec's tax system the changes to the federal tax legislation and regulations concerning:

— the shares of non-resident corporations held by partnerships (21);

— the taxation of foreign affiliates and the calculation of foreign accrual property income (25 and 88);

— foreign affiliate dumping rules (65 in part);

— functional currency tax reporting (77).

The changes to the Québec's tax system will be applicable on the same dates as those retained for the purposes of the federal measures with which they are harmonized.

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28 S.C. 2014, c. 20, s. 483.

29 CQLR, chapter A-6.002.

2. MEASURES CONCERNING INDIVIDUALS

2.1 Review of the notion of a dependent child for the application of certain measures that take into account the presence of a child in a household

In certain instances, the presence in a household of a child may increase the amount of the assistance granted by means of a refundable tax credit or give entitlement to an exemption or a reduction of the duties payable pursuant to a fiscal law.

As a general rule, the tax legislation makes to consider that a taxpayer has a dependent child in a given year if he or his spouse receives in respect of the child a child assistance payment for the year.

However, the application of this rule does not always fully achieve the objectives that the fiscal policy pursues. This is the case, for example, when a child is born in December, since no child assistance payment is granted in respect of the child for that month, or when one of the parents does not obtain custody of his children in the year of a separation.

Accordingly, to better adapt to the situation of families the criteria used to determine the presence of a child in a household, the terms and conditions of the refundable solidarity tax credit, refundable tax credits attributing a work premium and the Québec public drug insurance plan premium will be modified, according to the objectives that each measure pursues.

❑ Refundable solidarity tax credit

The solidarity tax credit is granted to low- or middle-income households to mitigate the cost of the Québec sales tax and housing and recognizes that the cost of living is higher in Northern villages than elsewhere in Québec.

For the purposes of calculating the housing component of the tax credit for any payment period beginning after June 2016, an individual may benefit from an additional amount for each minor child with whom he is normally living at the end of the reference year and in respect of whom he or his cohabiting spouse with whom he is normally living at that time receives, for the last month of the reference year, an amount in respect of the refundable tax credit for child assistance.

An individual may also benefit from an additional amount for the purposes of calculating the component related to individuals living in a northern village in respect of each minor child who, at the end of the reference year, has his principal place of residence in the territory, normally lives with the individual and in respect of whom the individual and his cohabiting spouse with whom he is normally living at the time receives, for the last month of the reference year, an amount in respect of the refundable tax credit for child assistance.

To obtain a more accurate picture of the composition of a household at the end of a reference year, the terms and conditions of application of the housing component and the component related the individuals living in a northern village will be modified to stipulate that an additional amount may also be granted in respect of a child who is born in December of the reference year, if it is reasonable to consider that the individual or his cohabiting spouse will receive in respect of this child, for the first month of the year that follows the reference year, an amount in respect of the refundable tax credit for child assistance.

For greater clarity, only 50% of the additional amount determined for the period of payment may be granted in respect of the child if it is reasonable to consider that the amount to be received in respect of the child as a refundable tax credit for child assistance by the individual or his cohabiting spouse will be determined according to the rules applicable to shared custody.

Moreover, analogous changes will be made to the terms and conditions governing the housing component and the component related to individuals living in a northern village that must be used to determine the amount of the solidarity tax credit to which an individual, who is an eligible individual at the end of December 31, 2015, is entitled for each of the months included in the period from January 2016 to June 2016.

❑ Refundable tax credits attributing a work premium

To support and value work effort and encourage people to give up last resort financial assistance to enter the labour market, the Québec's tax system grants tax assistance to low-income households. Such tax assistance takes the form of a work premium, which is adjusted differently depending on whether or not the household has a severely limited capacity for employment.

The federal tax system also grants a benefit, hereinafter referred to as the "working income tax benefit," to encourage the work effort of low-income households and mitigate the impact of the social assistance trap. For Québec residents, this benefit has been restructured to harmonize it with the work premium in order to bolster Quebecers' incentive to work.

For the purposes of calculating for a given taxation year the general work premium or the work premium adapted for persons with severely limited capacity for employment, an individual may, subject to certain conditions, designate as a dependant a person who, during the year, is one his children or one of the children of his eligible spouse for the year.

The children that an individual may designate for a given taxation year as a dependant include a child in respect of whom the individual or his spouse receive, for the year, an amount as the refundable tax credit for child assistance and a child who, during the year, is less than 18 years of age, ordinarily resides with the individual, and is neither the father nor the mother of a child with whom he is residing nor an emancipated minor.[30]

For the application of the working income tax benefit, an eligible dependant of an individual for a given taxation year is a child who, at the end of the year, is residing with the individual, is under 19 years of age and is not an individual who may apply for such a benefit.

30 When the custody of a person is shared pursuant to a judgment or, in the absence of a judgment, a written agreement, the person is considered to ordinarily reside with the individual solely if the period of the year during which the individual or his eligible spouse for the year must assume the custody of this person represents at least 40% of the year.

To better coordinate the tax measures aimed at enhancing the work incentive, Québec' tax legislation will be amended to stipulate that, for the application of the general work premium or the work premium adapted for persons with severely limited capacity for employment, an eligible individual for a taxation year has a dependant whom he may designate, for the year, if this person is, at the end of the year, a child of the eligible individual or of his eligible spouse for the year and if one of the following conditions is satisfied:

— the eligible individual or his eligible spouse for the year receives in respect of this person for the last month of the year an amount as the refundable tax credit for child assistance;

— the person is, at the end of the year, less than 18 years of age, ordinarily resides with the eligible individual and is neither the father nor the mother of a child with whom she is residing nor an emancipated minor;[31]

— the eligible individual or his eligible spouse for the year deducts an amount in the calculation of his tax payable for the year in respect of this person as the tax credit for minor children engaged in vocational training or post-secondary studies or could have deducted such an amount but for the person income for the year;

— this person is an eligible student for the application, for the year, of the transfer mechanism of the recognized parental contribution.

These amendments will apply as of the 2016 taxation year.

❑ The Québec public prescription drug insurance plan premium

To take into account households' ability to pay, the premium payable by an adult to the Québec public prescription drug insurance plan for a given year is determined according to family income, from which is subtracted an exemption that takes into account the composition of the household.[32]

Briefly, the *Act respecting the Régie de l'assurance maladie du Québec*[33] stipulates that a "dependent child" of an individual for a given year designates either a child in respect of whom the individual or his eligible spouse for the year receives, for the year, an amount as the refundable tax credit for child assistance, or a child in respect of whom the individual or his eligible spouse for the year deducts an amount in the calculation of his tax payable for the year on account of the transfer of the recognized parental contribution.

Essentially, this definition refers, first and foremost, to a minor child with whom the individual or his eligible spouse were residing during the year and, second, to a major child engaged in studies.

As formulated, the portion of the definition of the expression "dependent child" that refers to a minor child does not ensure the fairness and integrity of the rules used to calculate the premium.

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31 When the custody of this person is shared pursuant to a judgment or, in the absence of a judgment, a written agreement, the person will be considered to ordinarily reside with the individual solely if the individual or his eligible spouse for the year must assume at least 40% of custody time of this person for the last month of the year.

32 The amount that must be applied to reduce family income makes it possible to exempt from payment of the premium adults whose family income is below a certain threshold.

33 CQLR, chapter R-5.

Accordingly, this portion of the definition will be replaced to refer either to a child in respect of whom the individual or his eligible spouse for the year has received, for the last month of the year or, if the individual dies in the year and does not have an eligible spouse for the year, for the month of his death, an amount as the refundable tax credit for child assistance or would have received such an amount for this month if the payments for the tax credit had not ceased because of the death of the child in the year, or a child born in the last month of the year, if it is reasonable to consider that the individual or his eligible spouse for the year will receive in respect of this child, for the first month of the following year, an amount as the refundable tax credit for child assistance.

These amendments will apply as of 2016.

2.2 Clarifications concerning the assistance program for seniors to partially offset a municipal tax increase pursuant to a new assessment roll

The *Budget 2015-2016* announced that an assistance program for seniors to partially offset a municipal tax increase pursuant to a new assessment roll will be implemented in 2016.

Under the program, seniors who are long-time homeowners can, provided certain conditions are met, receive a grant to partially offset the municipal taxes payable on their residence following an increase in its value if the increase significantly exceeds the average increase for certain residential immovables for the municipal territory as a whole.

To simplify the calculation of the amount of the grant to which individuals may be entitled for a year, it was announced that the municipalities would indicate, on the tax account sent for a particular fiscal year, the amount of the potential grant attributable to the increase in a unit's property value where, pursuant to a new assessment roll applicable to the fiscal year, the increase in the unit's value exceeds the average increase by 7.5%.

Given that for certain municipalities the addition of an information on the tax account can be problematical, the tax regulation will be amended to stipulate that a municipality may use, instead of the tax account, a form prescribed for this purpose in order to indicate to residents the amount of the potential grant to which they may be entitled for a given year. If a municipality adopts this option, it will be obliged to send the prescribed form to each homeowner concerned no later than the last day of February of the year for which it has been produced. For greater clarity, the municipality will not be obliged to send a copy of each of the forms to Revenu Québec.

Actually, for the purposes of calculating the grant, only the rate of the general property tax that applies to entirely residential assessment units consisting of only one dwelling for the first fiscal year to which a given property assessment roll applies is considered. Moreover, when the municipality resulted from an amalgamation and, under the act or order by which it was constituted, it fixes, in respect of the general property tax, rates that vary according to the territories of the municipalities having ceased to exist on amalgamation, the rate of the general property tax corresponds to the theoretical rate that would be fixed for all of its territory if it did not levy the general property tax at different rates.

To take into account that certain municipalities decide, often for greater visibility, to levy one or more special general property taxes, the formula for calculating the grant will be modified such that at the rate of the general property tax that applies to entirely residential assessment units consisting of only one dwelling for the first fiscal year to which a given property assessment roll applies is added that of each of the other special property taxes that are levied, according to the taxable value, in the territory of the municipality overall and that apply to the entirely residential assessment units consisting of only one dwelling for the first fiscal year.

In addition, for the purposes of calculating the grant in respect of a unit of assessment located in a municipality resulted from an amalgamation, it will no longer required that the rate of the general property tax is replaced by a theoretical rate in the case where the general property tax has been levied with several rates. It follows that, in all cases, the determination of the grant will depend on the real tax rates.

Furthermore, the *Act respecting municipal taxation*[34] will be amended to stipulate that the sums required for the payment of the grants accorded by the assistance program for seniors to partially offset a municipal tax increase pursuant to a new assessment roll shall be taken out of the fiscal receipts collected under the *Taxation Act*.[35]

These amendments will apply as of 2016, that is to say the first year of application of the assistance program.

2.3 Broader possibility to spread out the taxation of certain lump-sum payments

An individual who receives during a given taxation year an eligible lump-sum payment pertaining to one or more eligible preceding years[36] for a total of at least $300 may use a special mechanism to calculate the tax payable on the payment. The mechanism, hereinafter referred to as the "averaging mechanism," is designed to avoid having an individual pay, for the given taxation year, more tax than what he would have paid had such payments been received and taxed during each of the years to which they relate.

A lump-sum payment is eligible for the averaging mechanism if it constitutes income from an office or employment, under the terms of a court judgment, arbitration award or a contract by which the parties put an end to a lawsuit, an earnings loss benefit, a supplementary retirement benefit or a permanent impairment allowance contemplated in section 43.4 of the *Taxation Act*,[37] a benefit paid pursuant to certain statutes,[38] a support amount or the reimbursement of an amount paid as support amount that is covered by the first paragraph of section 312.5 of the *Taxation Act* or any other amount, other than income from an office or employment, which, in the opinion of the Minister, could cause an undue additional burden if it were included in the calculation of income for the year of its reception.

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34 CQLR, chapter F-2.1.

35 CQLR, chapter I-3.

36 As a general rule, an eligible preceding year is a year throughout which the taxpayer was a resident of Canada, other than a year ending in a calendar year during which the individual went bankrupt.

37 CQLR, chapter I-3.

38 More specifically, such benefits are paid pursuant to the *Labour Adjustment Benefits Act* (R.S.C., 1985, c. L-1), the *Employment Insurance Act* (S.C. 1996, c. 23), the *Act respecting parental insurance* (CQLR, chapter A-29.011), the *Act respecting the Québec Pension Plan* (CQLR, chapter R-9), or the *Canada Pension Plan* (R.S.C., 1985, c. C-8).

Briefly, the averaging mechanism stipulates that an individual must make in the calculation of his tax otherwise payable for the year during which he received the eligible lump-sum payments an adjustment corresponding to the additional tax that would have been payable for each of the preceding years to which the payments apply had the payments been received during that year.

In addition, in the interests of fairness, the averaging mechanism stipulates the addition, in the calculation of the tax otherwise payable for the taxation year in which the eligible lump-sum payments were received, of an amount on account of recapture of certain tax credits that would not have been transferred to the spouse for the prior year had the averaged payments been taxed in such year, as well as an amount in lieu of interest calculated on the total of the additional tax that would then have been payable for the prior year and the amount of recapture of tax credits for such prior year.

To take into account that, despite the absence of litigation, more than one year may elapse between the payment of wage loss insurance benefits in accordance with an insurance plan and the event that gave rise to entitlement to such benefits, the *Taxation Act* will be amended for include into the list of lump-sum payments eligible for the averaging mechanism a wage loss insurance benefit covered by section 43 of the Act.

In addition, the *Taxation Act* will be amended to stipulated that the Minister may renounce, in whole or in part, to the amount in lieu of interest stipulated by the averaging mechanism when the number of years that an eligible lump-sum payment covers is attributable to exceptional circumstances that are beyond the control of the beneficiary of the payment.

These amendments will apply to taxation year 2008 and subsequent years. They will also apply for the same years to the averaging mechanism that is offered under the *Act respecting the Régie de l'assurance maladie du Québec*[39] for the purposes of calculating the 1% contribution of individuals to the Health Services Fund.

Moreover, *Information Bulletin 2014-7*[40] announced that an averaging mechanism will be implemented for the purposes of calculating the health contribution such that the receipt of certain lump-sum payments attributable to one or more preceding years does not unduly increase the amount payable in this respect for any year subsequent to 2012.

In this regard, the list of lump-sum payments eligible for the averaging mechanism will be modified in a declaratory manner to add thereto a wage loss insurance benefit covered by section 43 of the *Taxation Act* and an earnings loss benefit, a supplementary retirement benefit or a permanent impairment allowance contemplated in section 43.4 of the Act.

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39 CQLR, chapter R-5.

40 MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2014-7*, July 11, 2014, pp. 4-5.

2.4 Clarification concerning the expression "volunteer firefighter" for the application of certain tax measures

For more than 50 years, the personal income tax system has recognized the social role that volunteer firefighters play.

The measures adopted over the years have always sought to help rural and small communities, which are often unable to establish full- or part-time emergency teams and rely on the services of volunteers. They also take into account that volunteers may not deduct travel and other expenses in respect of the performance of their duties.

Actually, volunteer firefighters may take advantage of either of the following measures:

— the non-taxation, up to a maximum of $1 120[41], of the remuneration received during a given year for the duties performed as a volunteer firefighter for a government, a municipality or another administration;

— a non-refundable tax credit of $480 if the volunteer firefighters perform during a given year at least 200 hours of eligible volunteer firefighting service for a fire safety service or as eligible search and rescue volunteer service for an eligible search and rescue organization.

For the application of the measures, Revenu Québec has always considered that in the absence of a legislative definition, the expression "volunteer firefighter" was to be understood as a person who, as a volunteer, fights fires. Given that the usual meaning of the word "volunteer" refers to an individual who provides services simply by devotion, the level of remuneration is an important criterion to determine whether the person is acting as a volunteer.

According to this interpretation, part-time or full-time firefighters are not considered to be volunteer firefighters.

The position of Revenu Québec, which is intended to reflect fiscal policy, has recently been called into question by the Court of Québec. Indeed, in a judgment handed down on March 2, 2015,[42] the Court of Québec considerably broadened the meaning of the expression "volunteer firefighter" by ruling that:

> the definition of a director of a fire department must prevail over the definition suggested by the ARQ, which is similar to a legal definition, and the dictionary definition of a "volunteer firefighter," which differs from the actual situation of volunteer firefighters in Mascouche in 2011, which has changed over time and is not identical to that of firefighters in small towns located in remote areas. [TRANSLATION]

Given that the judgment runs counter to fiscal policy, the tax legislation will be amended to specify the meaning of the expression "volunteer firefighter" for the application of the non-taxation of certain amounts paid to volunteers in emergency services, the tax credit for volunteer firefighters and the tax credit for search and rescue volunteers.

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41 The amount is subject to automatic annual indexing.

42 *Normand Bourgeois* v. *Agence du revenu du Québec* (file n° 500-80-025946-139).

More specifically, an individual who, on a voluntary basis or for minimum annual compensation, responds to alarms from a fire safety service or a 9-1-1 emergency centre, issued in particular by radio, telephone, siren or fire alarm, will be considered to be a volunteer firefighter. To this end, an individual will not be considered to provide services as a volunteer firefighter or perform duties in this respect, when the individual:

— replaces permanent firefighters for short periods;

— is regularly or periodically on duty in a fire station;

— is remunerated for periods of on-call duty in the territory.

This modification will be declaratory. However, it will not apply to cases pending before the courts on March 2, 2015 and notices of objection served on the Minister no later than that date when the objection concerns the meaning of the expression "volunteer firefighter."

2.5 Recognition of diplomas obtained in another province for the application of the tax credit for new graduates working in remote resource regions

To combat the exodus by young people of remote resource regions and encourage the migration of the young people to such regions, the taxation system grants a non-refundable tax credit to new graduates who elect to start their careers in a remote resource region.

Briefly, the tax system provides that a new graduate who settles in a remote resource region[43] to engage in employment related to his field of specialization may benefit from a tax credit that reduces his tax payable by up to $3 000 per year (up to a cumulative total of $10 000[44]) as long as he resides continuously in a remote resource region and engages in employment there related to this field of specialization.

To benefit from the tax credit, an individual must have obtained a recognized diploma that attests the successful completion of studies that include some degree of specialization.[45] The secondary school diplomas and diplomas of college studies pre-university that attest to general training are not recognized.

The recognized diplomas may have been awarded in Québec, elsewhere in Canada or abroad. When the diploma has been awarded outside Québec, the tax legislation stipulates that a comparative assessment of the Minister of Immigration, Diversity and Inclusiveness attesting that the diploma is comparable to a recognized diploma awarded in Québec must be obtained.

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43 For the application of the tax credit, the Bas-Saint-Laurent (region 01), Saguenay–Lac-Saint-Jean (region 02), Abitibi-Témiscamingue (region 08), Côte-Nord (region 09), Nord-du-Québec (region 10) and Gaspésie–Îles-de-la-Madeleine (region 11) administrative regions, the Antoine-Labelle, La Vallée-de-la-Gatineau, Mékinac and Pontiac regional county municipalities and the urban agglomeration of La Tuque are remote resource regions.

44 However, in the case of a recognized diploma that is not at the post-secondary level, the cumulative amount may not exceed $8 000.

45 Essentially, a recognized diploma is a diploma that sanctions secondary level vocational training, college level technical training or university training.

To take into account that starting July 1, 2015, the comparative assessments of the Minister of Immigration, Diversity and Inclusiveness will only focus on diplomas obtained outside Canada, the tax legislation will be amended to stipulate the rules that will be applicable in order for a diploma awarded outside Québec in Canada to be recognized for the application of the tax credit.

More specifically, the tax legislation will be amended to stipulate that a diploma awarded outside Québec in Canada will be considered a recognized diploma for the application of the tax credit for new graduates working in remote resource regions if the diploma is:

- a diploma that attests vocational or technical training that was considered following a comparative assessment carried out by the Minister of Immigration, Diversity and Inclusiveness prior to July 1, 2015 to be comparable to one of the following diplomas:
  - an attestation of vocational education, a diploma of vocational studies or an attestation of vocational specialization, awarded by the Minister of Education, Higher Education and Research,
  - a diploma of college studies in technical training awarded by the Minister of Education, Higher Education and Research or by a college-level educational institution to which the Minister of Education, Higher Education and Research has delegated the responsibility for awarding such a diploma,
  - an attestation of college studies in technical training awarded by a college-level educational institution of Québec;
- a diploma that attests vocational or technical training, which, according to the written attestation from the educational institution responsible for the training is comparable to one of the following diplomas:
  - an attestation of vocational education, a diploma of vocational studies or an attestation of vocational specialization, awarded by the Minister of Education, Higher Education and Research,
  - a diploma of college studies in technical training awarded by the Minister of Education, Higher Education and Research or by a college-level educational institution to which the Minister of Education, Higher Education and Research has delegated the responsibility for awarding such a diploma,
  - an attestation of college studies in technical training awarded by a college-level educational institution of Québec;
- an undergraduate or graduate diploma or degree awarded by a university outside Québec in Canada.

To take into account these modifications, a correlative modification will be made in the definition of the expression "recognized post-secondary diploma."

These changes will apply as of the 2015 taxation year.

2.6 Modification of the nomenclature of programs that give entitlement to the deduction for foreign farm workers

The tax system grants certain foreign farm workers a deduction that exempts from tax a portion of their employment income earned in Québec.

The deduction applies to a farm worker who, in point of fact, did not reside in Canada at any time in a given year and who holds a valid work permit issued by the competent Canadian authority pursuant to the *Immigration and Refugee Protection Act*[46] issued to him within the framework of a recognized federal program.

Actually, the *Taxation Act*[47] recognizes for the application of this deduction three programs established by the federal government:

— the Mexican Seasonal Agricultural Workers Program;

— the Caribbean Seasonal Agricultural Workers Program;

— the Pilot Project for Hiring Foreign Workers in Occupations that Usually Require a High School Diploma or Job-Specific Training.

In recent years, the federal government has thoroughly revised programs for temporary foreign workers. In the context of the revision, the two programs for seasonal farm workers from Mexico and the Caribbean have been combined into a single program and the pilot project has become a separate stream of the Temporary Foreign Worker Program.

In this context, the *Taxation Act* will be updated to stipulate that, for the application of the deduction for foreign farm workers, a recognized federal program will include one or the other of the following streams of the Temporary Foreign Worker Program established by the federal government:

— the Seasonal Agricultural Worker Program;

— the Agricultural Stream.

These amendments will apply to taxation year 2013 and subsequent years.

46 S.C. 2001, c. 27.

47 CQLR, chapter I-3.

3. MEASURES CONCERNING BUSINESSES

3.1 Easing of the refundable tax credit for film production services

The purpose of the refundable tax credit for film production services is essentially to stimulate job creation in Québec by encouraging foreign producers to choose Québec as a filming location.

In general, the refundable tax credit for film production services is equal to 20% of total qualified production costs in relation to the various stages of production of an eligible film[48]. Qualified production costs correspond to the total of the qualified labour cost and the cost of qualified properties.

In addition, a qualified corporation may claim an increase for computer-aided special effects and animation equal to 16% of the qualified labour cost, where this cost relates to eligible activities tied to the completion of computer-aided special effects and animation for use in an eligible film.

Moreover, a corporation that holds a broadcasting licence issued by the Canadian Radio-television and Telecommunications Commission (hereafter called a "broadcaster") may not claim the tax credit (hereafter called the "rule excluding broadcasters").

To ensure the integrity of the rule excluding broadcasters and foster fairness among producers, the tax legislation provides for additional rules. These rules are intended to limit eligibility for the tax credit in the case of a corporation not at arm's length with a broadcaster and exclude certain expenses from the qualified production costs incurred by a producer.

Thus, the following expenses do not constitute qualified production costs for the purposes of the tax credit:

— the qualified labour cost relating to services rendered by a broadcaster as part of the production of an eligible film and the cost of qualified properties incurred in respect of a broadcaster relative to the rental or purchase of property used in the production of an eligible film;

— the qualified labour cost relating to services rendered by a corporation not at arm's length with a broadcaster as part of the production of an eligible film and the cost of qualified properties incurred in respect of a corporation not at arm's length with a broadcaster relative to the rental or purchase of property used in the production of an eligible film, unless the services are rendered, or the property is used, exclusively at the post-production stage of the film.

However, the exclusion, from the calculation of qualified production costs, of costs incurred in respect of a broadcaster, or, at a stage of production other than post-production, in respect of a corporation not at arm's length with a broadcaster, penalizes producers by reducing the amount of the tax credit they could otherwise claim in respect of an expense they in fact incurred for services or property necessary to the production of a film.

48 For greater clarity, "film" includes a television program.

In addition, in the context of the refundable tax credit for film production services, the inclusion of such costs would not jeopardize the integrity of the rule excluding broadcasters.

Consequently, amendments will be made to the tax legislation so that the qualified labour cost and the cost of qualified properties incurred by a qualified corporation in respect of a broadcaster or a corporation not at arm's length with a broadcaster, for services rendered in Québec or for the purchase or rental of property used in Québec, in relation to the stages of production of a film ranging from the screenplay to post-production, are included in a qualified corporation's qualified production costs for the purposes of the tax credit.

Lastly, the rules pertaining to the non-qualification for the tax credit, of a broadcaster or a corporation not at arm's length with a broadcaster, will be maintained.

The amendments to the tax legislation will apply to a qualified corporation's taxation year ending after March 26, 2015.

3.2 Tax credits for the development of e-business: clarifications concerning government contracts

The refundable tax credit for the development of e-business (hereafter called "TCEB") was introduced as part of the budget speech of March 13, 2008.[49]

Briefly, the TCEB, whose rate is 24%, is granted to a qualified corporation that pays salaries to eligible employees carrying out an eligible activity. However, the amount of the tax credit may not exceed $20 000 per employee annually.[50]

The TCEB has been permanent since the announcement made as part of the budget speech of March 26, 2015.[51] In addition, at that time, a new, non-refundable tax credit for the development of e-business was introduced.[52]

The new, non-refundable tax credit, calculated at the rate of 6%, is in addition to the TCEB at its current rate of 24%, restoring the overall level of tax assistance for e-business development activities to 30%, the level in effect prior to the reduction announced as part of the budget speech of June 4, 2014.

All of the conditions applicable to the TCEB in the *Act respecting the sectoral parameters of certain fiscal measures* (hereafter called the "sectoral act") apply to the non-refundable tax credit. The certificates used for the purposes of the new, non-refundable tax credit will be those that, for a taxation year, are used for the purposes of the TCEB.[53]

Thus, for a taxation year, qualified wages paid by a qualified corporation to an eligible employee that give entitlement to the TCEB for the taxation year will also give entitlement to the new, non-refundable tax credit corresponding to 6% of the wages.

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49 MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2008-2009 – Additional Information on the Budgetary Measures*, March 13, 2008, pp. A.79-A.85.

50 MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2014-2015 – Additional Information on the Fiscal Measures of the Budget*, June 4, 2014, p. 56.

51 MINISTÈRE DES FINANCES DU QUÉBEC, *Budget 2015-2016 – Additional Information 2015-2016*, March 26, 2015, p. A.81.

52 *Ibid.*, pp. A.83-A.84.

53 *Act respecting the sectoral parameters of certain fiscal measures* (CQLR, chapter P-5.1), Schedule A, s. 13.2.

In this context, qualified wages paid to an eligible employee for the purposes of the new, non-refundable tax credit will be capped at $83 333, the applicable wages under the TCEB.[54] As a result, the new, non-refundable tax credit may not exceed $5 000 per employee, calculated on an annual basis.

Moreover, as part of the budget speech of March 26, 2015, changes were made to the TCEB to exclude wages pertaining to certain government contracts from the base of the tax credit.[55]

At that time, it was announced that the tax legislation would be amended to exclude from an employee's qualified wages, for the purposes of the TCEB and the new, non-refundable tax credit, any portion of the wages that is attributable to the employee's duties for the employer in the performance of work relating o an agreement entered into between the employer and a government entity.

In that regard, a government entity means a Québec government department and an entity contemplated by section 2 of the *Financial Administration Act*,[56] such as Hydro-Québec, the Régie du logement, the Agence du Revenu du Québec and Investissement Québec.

However, in certain circumstances, a corporation that carries out work as a subcontractor on behalf of a government entity may, in turn, contract out part of that work.

Consequently, amendments will be made to the tax legislation to ensure that the objectives of the amendment announced as part of the budget speech of March 26, 2015, respecting certain government contracts, are achieved.

More specifically, the tax legislation will be amended to exclude from an employee's qualified wages, for the purposes of the TCEB and the new, non-refundable tax credit, any portion of the wages that is attributable to the employee's duties in the performance of work in respect of which a government entity is the ultimate beneficiary.

In addition, the tax legislation will be amended to introduce the notion of ultimate beneficiary for the purposes of these tax credits. More specifically, in accordance with the sectoral act, "ultimate beneficiary" will designate the person or partnership who directly or indirectly uses the applications developed by a corporation following the provision of services.[57]

These amendments will apply to wages incurred after September 30, 2015 by a qualified corporation in respect of an eligible employee that are attributable to the employee's duties in the performance of work in respect of which a government entity is the ultimate beneficiary, relative to an agreement entered into, renewed or extended between the corporation and a government entity after that date.

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54 *Taxation Act*, s. 1029.8.36.0.3.79, first para., definition of "qualified wages," as it will be amended further to Budget Speech 2014-2015. See note 50.

55 See note 51, pp. A.81-A.82.

56 CQLR, chapter A-6.001.

57 *Act respecting the sectoral parameters of certain fiscal measures*, Schedule A, s. 13.6, third para.

However, the amendments will not apply to wages incurred after September 30, 2015 by a qualified corporation in respect of an eligible employee that are attributable to the employee's duties in the performance of work in respect of which a government entity is the ultimate beneficiary, where the work is covered by an agreement entered into by the corporation and another qualified corporation concerning work ultimately carried out on behalf of a government entity, and the initial agreement relative to the work was entered into with the government entity prior to October 1, 2015.

3.3 Changes to the temporary refundable tax credit for damage insurance firms

The temporary refundable tax credit for damage insurance firms (hereafter called the "tax credit") was introduced as part of Information Bulletin 2013-7.[58]

Briefly, an eligible corporation that incurred eligible expenditures during its most recent taxation year ended before January 1, 2013 may claim the tax credit. The rate applicable for calculating the tax credit is 7.5% for 2013, 5% for 2014 and 2.5% for 2015.

An eligible corporation means, for a given taxation year, a corporation, other than an excluded corporation, that carried out damage insurance activities in Québec during its most recent taxation year ended before January 1, 2013 and that, at any time of the given taxation year, meets the following conditions:

— it is an excluded person for the purposes of the temporary contribution of financial institutions;[59]

— it is registered with the Autorité des marchés financiers to act as a damage insurance firm.[60]

In addition, the eligible expenditures of an eligible corporation refer to the portion of expenditures of a current nature it incurred during its most recent taxation year ended before January 1, 2013 and that can reasonably be attributed to its damage insurance activities in Québec, except certain amounts listed in Information Bulletin 2013-7.

Currently, a new corporation resulting from the amalgamation, on or after January 1, 2012, of one or more corporations is generally not eligible for the tax credit, even if the predecessor corporations were eligible for it, or would have been eligible for the tax credit had it not been for the amalgamation. Such a new corporation can meet the requirement of having a taxation year ended before January 1, 2013 only if it was formed as the result of an amalgamation occurred in 2012 and had a shortened taxation year.

However, the objective of the tax credit was to facilitate the transition of damage insurance firms towards harmonization of the Québec sales tax (QST) system with the goods and services tax and harmonized sales tax (GST/HST) system, since the firms were particularly affected by the harmonization due to certain factors specific to their industry. The amalgamation of corporations into a single corporation in no way changes the transition towards harmonization undergone by the corporations.

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58 MINISTÈRE DES FINANCES ET DE L'ÉCONOMIE DU QUÉBEC, *Information Bulletin 2013-7*, July 11, 2013, pp. 13-16.

59 As defined in section 2.2 of *Information Bulletin 2013-7*.

60 Under Title II of the *Act respecting the distribution of financial products and services* (CQLR, chapter D-9.2).

Consequently, out of a concern for fairness and to facilitate the achievement of the objective of the tax credit, changes will be made so that a new corporation that does not itself have a taxation year ended before January 1, 2013 and that was formed as a result of the amalgamation, on or after January 1, 2012, of one or more corporations that would have been eligible for the tax credit had it not been for the amalgamation or were eligible for the tax credit prior to the amalgamation, is also eligible for the tax credit, where the other conditions are met.

In this context, the eligible expenditures of the predecessor corporations will be deemed to be those of the new corporation formed as a result of the amalgamation for the purpose of determining the tax credit.

More specifically, for the purposes of the tax credit, a new corporation, other than an excluded corporation, that does not itself have a taxation year ended before January 1, 2013 and that was formed as a result of the amalgamation, on or after January 1, 2012, of one or more corporations that carried out damage insurance activities in Québec during their most recent taxation year ended before January 1, 2013 will be an eligible corporation for a given taxation year, where, at any time during the given taxation year, it meets the following conditions:

— it is an excluded person for the purposes of the temporary contribution of financial institutions;[61]

— it is registered with the Autorité des marchés financiers to act as a damage insurance firm.[62]

In this regard, the eligible expenditures of a new eligible corporation formed as a result of an amalgamation on or after January 1, 2012 will be deemed to be the total of the eligible expenditures incurred by each of the predecessor corporations during their most recent taxation year ended before January 1, 2013. In the case of an amalgamation that occurred after December 31, 2011 but before January 1, 2013, a predecessor corporation's most recent taxation year ended before January 1, 2013 refers to the taxation year ended immediately prior to the amalgamation.

For greater clarity, where the most recent taxation year ended before January 1, 2013 has fewer than 365 days, the amount of eligible expenditures for the purpose of calculating the tax credit will be deemed to be equal to the eligible expenditures, otherwise calculated, multiplied by the fraction obtained by dividing 365 by the number of days in such taxation year.

Lastly, in the case of an amalgamation occurring after December 31, 2012, the predecessor corporations, for their taxation year ended immediately prior to the amalgamation, and the new corporation, for its taxation year beginning at the time of the amalgamation, will share the tax credit taking into account the number of days in the taxation year during which they were respectively eligible for the tax credit.

These changes will apply retroactively to when the tax credit came into effect, namely, as of the 2013 calendar year.

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61 See note 59.

62 See note 60.

3.4 Recognition of a new centre as an eligible public research centre

A taxpayer that carries on a business in Canada can obtain a refundable tax credit for scientific research and experimental development (R&D) of 14% in relation to R&D activities carried out on its behalf, in Québec, by an eligible public research centre in the course of an eligible research contract that the taxpayer enters into with such a centre. The 14% rate may be increased up to 30% for a qualifying corporation.[63]

However, no fiscal assistance is granted for a taxpayer's or partnership's otherwise qualified R&D expenditures that are below a threshold applicable to the taxpayer or partnership for a taxation year or fiscal period, as applicable. In short, the threshold corresponds to $50 000, increasing linearly to $225 000 where the assets of the taxpayer or partnership, as applicable, vary between $50 million and $75 million.[64]

It is the responsibility of the Ministère des Finances to recognize a research centre as an eligible public research centre for the purposes of this refundable tax credit for R&D.

To recognize a research centre as an eligible public research centre for the purposes of the refundable tax credit for R&D, the Ministère des Finances requires that the centre demonstrate its capacity, in terms of human, physical and financial resources, to carry out R&D work on behalf of businesses.

Accordingly, the employees of the research centre must have the qualifications required to carry out R&D work and the research centre must have premises and equipment that enable it to do such work in its field of expertise. In addition, the research centre must obtain most of its financing from public funds.

A new research centre will be recognized as an eligible public research centre for the purposes of the refundable tax credit for R&D—the Institut de recherche et de développement en agroenvironnement (IRDA). This recognition will apply to R&D carried out by the centre after January 9, 2015 under a research contract entered into after that date.

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63 Briefly, this is a corporation that is not controlled, directly or indirectly in any manner whatever, by one or more persons not resident in Canada and that has assets, taking into account the assets of associated corporations, of less than $75 million for the preceding fiscal period. More specifically, where the assets are $50 million or less, the rate is 30%, reducing linearly to 14% where the assets vary from $50 million to $75 million. The higher rate concerns only the first $3 million in qualified R&D expenditures.

64 MINISTÈRE DES FINANCES DU QUÉBEC, *Information Bulletin 2014-11*, December 2, 2014, pp. 22-24.

4. OTHER MEASURES

4.1 Field of application of the false statement or omission penalty

The *Taxation Act*[65] provides a penalty applicable to every person who, knowingly or under circumstances amounting to gross negligence, has made or has participated in or acquiesced in the making of, a false statement or omission.

Briefly, the amount of the penalty is equal to the greater of $100 and 50% of the amount corresponding to the total tax evaded and the overpayments requested as refundable tax credits intended for taxpayers who operate a business.

Actually, the penalty does not apply to overpayments requested as refundable tax credits intended solely for individuals. While in such instances a similar penalty may be imposed pursuant to the *Tax Administration Act*,[66] it seems more appropriate to apply the same penalty to all tax benefits that an individual may derive from a false statement or omission in his income tax return.

Accordingly, section 1049 of the *Taxation Act* will be amended such that the field of application of the false statement or omission penalty stipulated therein is extended to an overpayment requested as a refundable tax credit intended solely for individuals, except for the refundable tax credit for child assistance.

These amendments will apply from the day after date on which the bill amending section 1049 of the *Taxation Act* is assented to.

4.2 Clarifications concerning certain private prescription drug insurance plans

The basic prescription drug insurance plan established by the Québec government guarantees all Quebecers fair access to the drugs that their state of health requires. The protection offered by the plan is assumed either by the Régie de l'assurance maladie du Québec as the administrator of the public prescription drug insurance plan or by insurers in group insurance or the administrators of private-sector benefit plans.

As a general rule, the Régie de l'assurance maladie du Québec assumes the coverage of individuals who are not obliged to adhere to a group insurance contract or a fringe benefits plan applicable to a determined group of persons or the coverage of individuals whom no one is obliged to cover.

Adults registered with the Régie de l'assurance maladie du Québec are usually required to contribute to the payment of the cost of pharmaceutical services and drugs supplied to them each time a prescription is filled or renewed. The contribution, which is subject to a maximum amount, consists of a deductible amount and a coinsurance payment.

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65 CQLR, chapter I-3, s. 1049.

66 CQLR, chapter A-6.002.

In addition, any adult who does not benefit for a full year from the guarantees stipulated by the basic prescription drug insurance plan pursuant to group insurance or a benefit plans in the private sector is usually required, pursuant to the *Act respecting the Régie de l'assurance maladie du Québec*[67], to pay in respect of such a year a premium to finance the public prescription drug insurance plan.

Since August 30, 2006, the *Act respecting prescription drug insurance*[68] stipulates that an individual insurance contract must include guarantees at least equivalent to those in the basic prescription drug insurance plan, if it satisfies the following conditions:

— it is offered to individuals who are eligible for the basic prescription drug insurance plan who are part of a group with private coverage within the meaning of section 15.1 of the Act;

— it includes coverage for accident, illness or disability;

— it is concluded on the basis of one or more distinctive characteristics of group insurance.

A uniform annual premium, coverage offered regardless of the risk associated with state of health, rates or financial arrangements based on the history of the group or a contract negotiated between an insurer and an intermediary on behalf of the group are considered to be distinctive characteristics of group insurance.

According to section 42.2 of the *Act respecting prescription drug insurance*, a contract that must include coverage at least equivalent to the basic plan coverage is governed by the provisions of this Act that are applicable to a group insurance contract. In addition, the insurer or the policyholder and the persons who are part of the group to whom the contract is offered or made available or for whom it is maintained must fulfill all their respective obligations under this Act.

Notwithstanding that section 42.2 of the *Act respecting prescription drug insurance* allows certain individual insurance contracts to be treated as if they were group insurance contracts, the expression "group insurance contract" that is used in paragraph *a* of section 37.7 of the *Act respecting the Régie de l'assurance maladie du Québec* to grant a premium exemption to an individual who benefits from the guarantees stipulated by the basic prescription drug insurance plan pursuant to group insurance does not appear to be sufficiently explicit to cover individual insurance contracts concluded on the basis of one or several distinctive characteristics of group insurance.

Accordingly, in order to dissipate any ambiguity in this respect, paragraph *a* of section 37.7 of the *Act respecting the Régie de l'assurance maladie du Québec* will be amended to refer to an individual who benefits from the coverage provided for by the basic prescription drug insurance plan established by the *Act respecting prescription drug insurance* under a group insurance contract, an employee benefit plan or an individual insurance contract covered by section 42.2 of that Act that is applicable to a group of persons determined in accordance with section 15.1 of that Act.

Furthermore, to avoid any problem of interpretation, a technical amendment will be made to section 15.1 of the *Act respecting prescription drug insurance*.

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67 CQLR, chapter R-5.

68 CQLR, chapter A-29.01.

The amendments to the *Act respecting prescription drug insurance* and the *Act respecting the Régie de l'assurance maladie du Québec* will come into force on August 30, 2006.

Moreover, given that the individual insurance contracts referred to in section 42.2 of the *Act respecting prescription drug insurance* are comparable to group insurance contracts and are treated the same way under this Act, the tax on insurance premiums system will be modified accordingly, which will ensure equivalent tax treatment of all the premiums payable under such contracts.

Accordingly, the premiums payable under an individual insurance contract referred to in section 42.2 of the *Act respecting prescription drug insurance* will be deemed to be group insurance premiums for the application of the tax on insurance premiums system, such that they will become subject to the tax.

To ensure that persons required to collect the tax because of this presumption have sufficient time to make the requisite modifications to their systems without having themselves to bear the tax during the period in which the modifications are being made, the presumption will apply to premiums paid as of January 1, 2016.

4.3 Clarification concerning the remuneration of family-type resources and certain intermediate resources

Since June 2009, individuals who are responsible for a family-type resource are covered by the *Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements*,[69] hereunder the "Act respecting the representation of resources". This also applies for individuals who are responsible for an intermediate resource if they receive in their principal place of residence a maximum of nine users who have been entrusted to them by one or more public institutions and, in the temporary absence of users, they maintain their principal place of residence for use as a residence for such persons.

The Minister of Health and Social Services sets a classification of services offered by these resources that is based on the degree of support or assistance the users require. For each type of services covered by this classification, a resource's remuneration is determined in accordance with the "Act respecting the representation of resources" if the resource is represented by an association recognized under such Act and, if not, by the Minister of Health and Social Services.

To reflect the fact that the individuals responsible for a resource covered by the "Act respecting the representation of resources" are not required to include the remuneration granted to them on that account in the calculation of their income,[70] various amendments have been made to the *Act respecting parental insurance*[71] and the *Act respecting the Québec Pension Plan*[72] for these individuals to participate, as of 2012, in the plan established under these statutes.

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69 CQLR, chapter R-24.0.2.

70 Such non-inclusion is stipulated in paragraph c.2 of section 489 of the *Taxation Act* (CQLR, chapter I-3).

71 CQLR, chapter A-29.011.

72 CQLR, chapter R-9.

These amendments stipulate in particular the applicable rules for determining the portion of the remuneration of an individual responsible for a family-type resource or intermediate resource that must be used for the purposes of calculating his pensionable earnings for the purposes of the Québec Parental Insurance Plan and the Québec Pension Plan.

Briefly, the *Act respecting parental insurance* and the *Act respecting the Québec Pension Plan* were amended to stipulate, in the first case, that the eligible remuneration as family-type resource or as intermediate resource of a person for a year and, in the second case, that the earnings of a worker as a family-type resource or as an intermediate resource for a year correspond to the total of the amounts each of which represents a remuneration for services provided as a person responsible for such a resource for the year.

In this regard, the remuneration for services provided as person responsible for a given family-type resource or intermediate resource for a year is equal to the excess of the aggregate of the amounts each of which corresponds to an amount received by the resource in the year on account of a remuneration mentioned in subparagraph 1 or 2 of the third paragraph of section 303 of the *Act respecting health services and social services*[73] over the total of the following amounts:

— the portion of such aggregate that, under the terms of a collective agreement governing the payment of the remuneration or, if there is no such agreement, of a decision by the Minister of Health and Social Services taken with the authorization of the Conseil du trésor pursuant to subparagraph 2 of the third paragraph of section 303 of the *Act respecting health services and social services*, is attributable to the total of the following amounts:

  – the amount of reasonable operating expenditures brought about in the course of delivering the services of the family-type resource or the intermediate resource,

  – the aggregate of the financial compensations mentioned in subparagraphs *b* and *c* of paragraph 4 of section 34 of the "Act respecting the representation of resources";

— the portion of such aggregate that corresponds to the total of the amounts each of which is an eligible expenditure paid for the year to enable the family-type resource or the intermediate resource to receive assistance or to be replaced in the course of their delivery of services.

Actually, two forms of financial compensation are, by reference to section 34 of the "Act respecting the representation of resources,"[74] excluded because of their nature from the remuneration for services provided as person responsible for a given family-type resource or intermediate resource.

73 CQLR, chapter S-4.2.

74 Section 34 of the "Act respecting the representation of resources" stipulates the parameters whereby the remuneration of a resource must be established.

The first one, stipulated in sub-paragraph *b* of paragraph 4 of section 34 of the "Act respecting the representation of resources" seeks to take into account the difference between the contribution rate applicable to the resource to participate in this capacity in the Québec Parental Insurance Plan and the Québec Pension Plan and the contribution rate applicable to an employee or a salaried worker, as the case may be, to participate in the plans, while the second one, which is stipulated in sub-paragraph *c* of paragraph 4 of the same section, seeks to enable the resource to benefit from the protection granted by the *Act respecting industrial accidents and occupational diseases*.[75]

Bearing in mind that the individuals responsible for the resources covered by the "Act respecting the representation of resources" may also benefit, under the terms of a collective agreement governing the payment of the remuneration or, if there is no such agreement, of a decision by the Minister of Health and Social Services, of a financial compensation intended to give them access to certain services with regard to plans in such areas as employment benefits, amendments will be made to the "Act respecting the representation of resources" such that this compensation is covered by sub-paragraph *c* of paragraph 4 of section 34. Section 34 of the Act will also be amended to specify that the remuneration of a resource must be established in accordance with the parameters provided therein.

These amendments to section 34 of the "Act respecting the representation of resources" will apply as of 2012. It follows that, retroactive to 2012, the financial compensation intended to give access to certain services with regard to plans in such areas as employment benefits will be excluded from the remuneration for services provided as person responsible for a given family-type resource or intermediate resource for the purposes of calculating pensionable earnings for the application of the Québec Parental Insurance Plan and the Québec Pension Plan.

75 CQLR, chapter A-3.001.